

The University of Chicago

MISCEGENATION IN THE ANTE-BELLUM SOUTH

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF HISTORY

1937

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JAMES HUGO JOHNSTON

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The problem of racial mixture in the ante-bellum South is a complicated one. Our evidence is largely the simple fact that there were many mulattoes in the section at all periods. Few of these were born of legitimate marriages between members of the white and Negro races. Most of them were the product of illegitimate relations. Few records can be found to offer definite proof of guilt and much must ever remain in the realm of speculation. Any picture of the situation must be incomplete; conclusions must remain tentative. Of only one thing can we be reasonably certain; miscegenation was a normal consequence of human beings living and working together at common tasks. No unusual moral qualities, on the part of either group, need to be assumed.

The mulatto was in most cases, it seems certain, the descendant of the white man and the Negro woman. Sexual life in the slave period exhibited phenomena that would be characteristic of any community where subject women are controlled by men. As in the North, so also in the South men were neither entirely good nor entirely bad. As among human beings everywhere there were among the slaveholders many virtuous men and there were also many vile characters. Overseers and lesser whites on neighboring farms were of like character. It will also be remembered that there were always thoughtless and passionate young men about the plantations and it is evident that the adventures of these young men need not be considered as typical of men of maturer years or of the morality of the entire slave country. The Negro slave woman was an absolute dependent; dependent upon white men who dominated the little isolated world of the plantation. The black woman as other women subject or economically dependent upon controlling males made use of such powers as nature had given her for her personal aggrandizement. Was the white man or the black woman the aggressor? The answer is a matter of speculation, but in every case a problem of human relations and not a problem of white or black character.

Southern moral leaders recognized the temptations slavery offered to white youth. On this subject a Virginia minister wrote,

Vice to a most shameful extent is proved by the rapid increase of mulattoes. How many have fallen before this temptation! So many that it has almost ceased to be a temptation to fall! Oh, how many parents may trace the impiety, licentiousness, and shame of their prodigal sons to temptations found in female slaves in their own or neighbours households!¹

On this question Lord Lyell observed "to the dominant race one of the most serious evils of slavery is its tendency to blight domestic happiness; and the anxiety of parents for their sons, and constant fear of licentious intercourse with slaves, is painfully great."² The evidence points to many acts of youthful indiscretion and the consequent regrets of maturer years. For example, a slave woman writes, "She is the illegitimate daughter of the late (____), who by his testament and last will as an act of justice and attonement for an error of an unguarded moment, bequeathed to his innocent offspring the boon of freedom and a pecuniary legacy of \$1,000"³ No doubt there were many cases in which the white boy "had followed the black girl to the spring and had attempted an improper connection with the girl."⁴ Records of such clandestine events as the above are seldom found in the Archives of a southern State. The records that the Archives preserve are rather the accounts of the acts of mature men. Such documents refer to the efforts of old men to provide for their unfortunate children by legislative act or by will, or, as will be seen in the following chapter, they relate to domestic difficulties caused by the presence on the plantation of Negro mistresses and their children. For obvious reasons the author does not wish to include in the body of this work the account of the abolitionist regarding conditions in the pre-war South.⁵

¹ John D. Paxton, Letters on Slavery, Addressed to the Cumberland Congregation (Lexington, Ky., 1833), pp. 129-30; William G. Simms, "Morals of Slavery," The Pro-Slavery Arguments (Philadelphia, 1852), pp. 228-29.

² Sir Charles Lyell, Second Visit to the United States (New York, 1849), I, 271.

³ Archives of Virginia, Legislative Papers, Petition, King William County, Dec. 19, 1825. Hereafter Archives of Virginia, Legislative Papers, will be omitted and the petition identified by number, county, and date (insomuch as this information is available).

⁴ Petition 5018, Culpeper, Dec. 9, 1806.

⁵ Robert Sutcliff, Travels in Some Parts of North America in the Years 1804, 1805, 1806 (York, England, 1815), pp. 37-38; American Slavery as It Is: The Testimony of a Thousand Witnesses (New York, 1839), pp. 33, 51; Samuel A. Ferrell, Ramble of Six

The petition of William Kendall affords an example of a master who sincerely regretted the past act for which he assumed responsibility. This case may be considered typical of many others. This petitioner

respectfully sheweth, that . . . , like many frail men, he hath fallen into a vice, that humanity and nature, added to moral principles, dictate the only alternative now left, viz. this zealous and devout petition. He is impelled with blushes and confusion to own and acknowledge the cause that brings him forward on this occasion. Your petitioner believes and acknowledges himself to be the father of the said mulatto boy by a woman at that time the property of himself, and as his parent he feels great solicitude for his future welfare and liberty. It is with great concern and uneasiness that he looks forward to the possibility of his being a slave to any person¹

De Tocqueville tells us,

I happened to meet with an old man in the south of the Union who had lived in illicit intercourse with one of his own negroes and had had several children by her who were born the slaves of their father. He had indeed frequently thought of bequeathing to them at least their freedom, but years had elapsed without his being able to surmount the legal obstacles to their emancipation and in the meanwhile his old age was come and he was about to die. He pictured to himself his sons dragged from market to market and passing from the authority of a parent to the rod of a stranger until these horrid anticipations worked his expiring imagination into a phrenzy.

It is not to be thought that the mulatto was always the offspring of its owner. The deposition of Travers Daniel provides an example of a white father who attempted to provide for his child but in this instance the mother of the child was the property of another man.

Travers Daniel . . . made oath that sometime in the year 1798 or 1799 William Simmons an old infirm white man applied to him to advance a sum of money for him to purchase a boy by the name of George Simmons, which he the said Simmons had begot on a woman slave belonging to Mr. Enoch Mason, and expressed a particular desire that the said boy should be liberated and become a free man when he arrived at the age of 21 years, and he and his son the said boy would make him compensation by their services by the time the said boy became of age. To gratify the old man (who I understand had no other children and was not married) I applied to Mr. Mason to know if he

Thousand Miles through the United States (London, 1832), pp. 194-95; Baptist W. Noel, Freedom and Slavery in the United States (London, 1863), p. 86; Charles W. Jensen, The Stranger in America (London, 1807), pp. 383-84.

¹Petition 6231, King George, Dec. 15, 1813.

²Alexis de Tocqueville, American Institutions and Their Influence (New York, 1855), p. 384.

would sell the boy. He appeared to be rather unwilling to part with him, but when he understood that he was to be liberated when he became of age he agreed to part with him¹

Where harsh laws applied to the mulatto, they were applied to the children of white men. Fathers of such children would have been inhuman had they not sought to lighten the burden of their children. On examination of the wills of deceased slaveowners it frequently appears that the deceased master is the father of certain slaves and seeks to make provision for his children. The following document affords an example:

I, Thomas Wright give and bequeath to Sylvie, a woman of color, formerly my slave but since emancipated and with whom I have had children, the sole and exclusive enjoyment and use of the house or tenement on my plantation, in the said county where I now reside also all the household furniture therein also all the monies of which I die possessed; secondly I give and bequeath to my natural son, Robert Wright, by the said Sylvie who I have duly emancipated all that tract of land on which I now live with its appertinences, containing by estimation three hundred and seventy acres also all my stock of every description and plantation utensils²

The will of Philip Henshaw declares:

. . . . I give and bequeath to my daughter (for such I believe her to be) Floreal Floretta (a girl I bought of Robert Robb, she was born of a yellow woman whom I bought of the said Robert Robb) her freedom, I also bequeath to her one-half of my estate of every description whatsoever, to her and her heirs forever It is my desire that my sister Sallie Gatewood, out of the estate here devised to Floreal Floretta, shall board her at some decent white woman's house, and have her educated. . . . In event of my sister Sallie Gatewood complying with the foregoing request, I give her and her heirs forever one-half of my estate of every description whatsoever, but should my sister pay no regard to and fail to proceed to comply with this request, then and in that case the moiety hereby devised to her, I also bequeath to the said Floreal Floretta. I do not give anything to my brothers Edmund and John or my brothers children, knowing that they are well off³

The will of John Stewart, of Petersburg, provided that Mary Vizzaneau, "my natural colored daughter" shall have all I have at the bank, amounting to \$19,500, and the house and lot in that part of the town called Gillfield, in which I now reside."⁴

¹Petition 5481a, Stafford, Dec. 15, 1809.

²Petition 6730, Campbell, Nov. 16, 1816; see also petition 9155.

³Petition 8468, Essex, Dec. 15, 1825.

⁴Petition 6323, Buckingham, Oct. 18, 1814.

A petition to the legislature of the State of Virginia describes the legatees of a certain Craddock Vaughn in the following manner:

Your petitioners, Elenor Vaughn, Margaret Vaughn, and Dicey Vaughn, respectfully represent and show unto your honorable body, that Craddock Vaughn, lately a resident of the county of Halifax, and state of Virginia made a last will and testament in writing which has been duly admitted to probate in the clerk's office of the county of Halifax by which he emancipated your petitioners and intends to give them the full and free enjoyment of all the rights and immunities of free persons of color. That the said testator in his lifetime raised them as his own children and paid them every regard which a paternal care for their interest seemed to require. That though they were by the laws of the land necessarily regarded as slaves (their mother being a slave) and now are taken by the laws to be noted as free negroes--they are in fact and in truth much more than three-fourth white as far as blood is concerned and in color almost entirely so--that the said Elenor is their mother and Dicey was a favorite of their master--the rest being his children. Your petitioners further represent that the said Craddock Vaughn though in his lifetime a man of intemperate habits had by industry and unusual economy accumulated an estate of not less than seven or eight thousand dollars--all of which he bequeathed to his executors to be held and controlled for the just and exclusive benefit of your petitioners . . . , that the said estate consists of seven slaves, all of whom are valuable and whose value will increase since all are young, and several of them are children, of . . . acres of land, very productive and finely located on the Dan river, of a large stock, and such perishable property as is usually attached to such a farm¹

It is to be noted that in many wills no intimation is made by the white man of his paternal relation. In many cases it is only by the study of accompanying documents that the paternity of many mulattoes can be discovered. In the following case the "bosom friend" is the mother of the testator's mulatto children:

I, Walter Robertson, late of Virginia, but now of New Bern, North Carolina--do make this my last will and testament, that is to say, First, Second, it is my will that my bosom friend, Ann Rose, for her long and faithful services, be immediately after my death put in possession of all my lands, slaves, household furniture, plate, stocks of horses, cattle, and every kind of real and personal estate which may belong to me, which real and personal estate I lend to the said Ann to enable her to support herself and to maintain and educate my daughter Margaret by the said Ann, as also a child with which she is now pregnant, provided the said child be born within nine months from the date of these presents. It is further my will that whenever peace shall be established between Great Britain and America or a cessation of hostilities take place so that an intercourse takes place between the now contending powers, that then (if such peace or cessation takes

¹Petition 17511, Halifax, Jan. 15, 1851.

place within seven years) the whole of my real and personal estate, including my stock in trade with William Beattie and Samuel Call be turned into money by my executors hereafter to be named and the proceeds thereof to be divided between the said Ann Rose, our daughter, Margaret, and the child she is now supposed to be pregnant with or the survivors of them, share and share alike and it is further my will that my executors shall furnish the said Ann with money sufficient to pay her and her child or children's passage and expenses to Glasgow, where the aforesaid remittance shall be made, It is my will that if the said Ann forgetful of our long acquaintance and unmindful of the good of her child or children, should at any time within the said seven years aforesaid form a connection with any man or marry so as to live in carnal intimacy with him that then all and every part of this will which respects the said Ann shall cease and become void and she therefore shall be entitled to no benefit or emolument from it whatever¹

This will makes no mention of the slave status of Ann Rose but upon the death of the master and father, Ann, a mulatto, petitions the legislature of Virginia that she and her children shall not be sent to Great Britain, but be permitted to remain in the State, retaining the property left to them by Walter Robertson.

In the same county (Halifax) and at about the same time, a Reverend James Fowles by will set free and gave lands to his slaves Molly and John. Many years later when the individuals in question petitioned to be permitted to remain in the State, it is testified that their benefactor, the Reverend James Fowles, "was confessedly, both their master and natural father."² The petition of Lucy, Polly Rose, Ottey Rose, and Alexander Rose, shows that they were emancipated by the will of James Haliburton, and they certify that they are "the children of their master, who by his will has made ample provision for their support"³ The will of Thomas Moody provides: "My house maid Laury, shall be put under some persons that shall learn her the said Laury to weave and sew and she shall be emancipated at the age of twenty-one years." Here again the father fails to mention the relation of his paternity, but the executor of his will states that "he firmly believes that the strongest of all human ties induced his testator first to purchase and then to give her freedom"⁴

¹Petition 1005, Halifax, Dec. 5, 1783.

²Petition 3127, Halifax, Nov. 4, 1793.

³Petition 13107, Nelson, Jan. 11, 1841.

⁴Petition 7247, New Kent, Dec. 18, 1818.

The will of a prominent planter makes the following provision for two of his slaves;

I desire that Lucy, a mulatto girl daughter to Sophia may be set free--I lend to the said child one thousand dollars to be laid out in bank stock, and the profits therefrom to be paid annually to her by my executors for her support so long as she lives, and at her death I give the same to be divided among her children should she leave any lawfully begotten; should she die without issue as above I desire that the said money shall return to my estate--I also give to the said child, Lucy, one bed and furniture--I give to Sophia the mother of the said Lucy, her freedom and five pounds per year for her support to be paid to her by my executors during her natural life.

I desire my executors to keep the mulatto girl Lucy before mentioned until she is twelve years of age before she is emancipated for the purpose of sending her to school.

I also desire the woman Sophia not to be emancipated until the emancipation of her child, that she may have the liberty of living with her child, providing she comply with my request. Viz. to spin three pounds of yarn thread for each of my sisters each year, she to be under the particular direction of my executors until she is emancipated and to be supported by them with three barrels of corn, one hundred weight of pork, four pounds of coffee, and ten pounds of sugar per year.¹

Here as in other cases the father appears to desire to conceal the relationship but a later petition asking that Lucy be permitted to remain in the State declares that "Lucy Ann is the illegitimate daughter of _____, Esq."² Other examples of emancipation by will of the master and father are to be found in the Virginia Archives.³ Cases similar to the above are found in the other southern States.⁴

¹Petition 7325a, King William, Dec. 28, 1818.

²Petition, King William, Dec. 19, 1825.

³Petition 6110b, Dec. 14, 1812: "Your petitioner has been married to and has had several children of the said Nelson, who is a white man, has lately been enabled to purchase him, with the design to have him emancipated, but he refusing to accept freedom on conditions required by the existing provisions of the law, of departure from the state, and consequent eternal separation from his family; his said father has had the conveyance of him made to your petitioner and his children, in whom the whole right and property in the said Nelson now resides. Your petitioner under the influence of feelings most natural to a wife has the utmost unwillingness to hold her husband in servitude and she has moreover been advised that in event of her death he would be liable to, and must of necessity be sold, for the distribution of his value among his children, or worse, must remain in slavery to those children who would also be his own."

⁴Cunningham's Heirs v. Executors of Thomas Cunningham, Cameron and Norwood, North Carolina Reports, p. 353 (1801); Ford v. Ford, 26 Tennessee Reports, p. 92 (1846); Laura Jane v. Hagen, Adms., 10 Humphrey, Tennessee Reports, p. 352 (1849); Cooper v. Blakey, 10 Georgia Reports, p. 263 (1851); Thornton v. Chisholm, 20 Georgia Reports, p. 263 (1856).

In the lower South, because of the liberal attitudes and traditions handed down from the Spanish and French colonists, there appears to have been more sympathy for the mulatto and consequently many interesting social situations are reported in this region. Here in the early slave period, much valuable property had been accumulated by the mulatto heirs of white fathers. But with the passing of time, as in Virginia, sentiment became more and more adverse to the free Negro; the slave code became more severe; and, finally, laws were enacted that prohibited the emancipation of Negro slaves. But the human attachments of fathers to their children could not be destroyed, and white fathers sought means to evade the law as it affected their own children. It is because of this situation in the lower South that interesting communities of free Negroes were established in southern Ohio and Indiana. Many white fathers took their Negro families to this region and emancipated them. Because of this paternal interest many intricate problems were presented to the courts of the slave States.

In 1863, John Hooper, a native of Alabama, died leaving a will which among other provisions declared:

It is my wish, that all my just debts be paid, and that my brother Zachariah L. Hooper, act as my executor--after administering on my estate or as soon as he can do so. It is my wish that he take Harriet, a yellow woman, and her six children (Namely Ellen, William, Mary Jane, Zachariah, Eliza, Ann, and Joseph) to the state of Ohio, and free them there; settle them comfortable in the country, not in the city, and after settling Harriet and her six children as above named, my executor is requested to place in some solvent bank in Ohio the sum of ten thousand dollars, to be used in the following manner--That Harriet and her six children are to be supported from the interest of the ten thousand dollars; and the principal not to be used unless Harriet marries, and then she may draw her proportionate part.¹

In this case it was decided that these people, who had been settled in Ohio, were to be regarded as free persons of color according to the laws of Alabama, but that they could not receive the property for the will had been administered before they left the State of Alabama, at which time they were still slaves and as slaves they could not possess property. The legacy therefore reverted to the white relations of the deceased.

In 1858 a similar case appears in the records of Alabama. In this instance the white relations attempted to recover the

¹Hooper v. Hooper, 32 Alabama Reports, p. 669 (1858).

property of the deceased on the ground that the mulatto woman had used undue influence on her master; that the will was the result of his attachment for the woman and his children, and that the will was made "to spite his brothers and sisters, who would not associate with him on account of his adulterous intercourse with the negro woman."¹

Cases of the same description are to be found in the records of Mississippi. Here it is found that Elisha Brazelle

left his residence in this state sometime in the year 1826, and took with him to the state of Ohio a negro woman and her son John Monroe Brazelle to be emancipated and brought them back to the state of Mississippi. During his stay in Ohio he executed a deed of emancipation of the said slaves and then returned with them to his residence in Jefferson county. In his will Elisha Brazelle recited the fact that he had executed a deed of emancipation declared his intention to ratify the said deed, and devised all his property to John Brazelle, whom the testator acknowledged to be his son.

In this instance the courts refused to permit the mulatto son to receive the legacy, the decision declaring that

the statement of the case shows conclusively that the contract had its origin in an offence against morality, pernicious, and detestable as an example. But above all, it seemed to be planned and executed to evade the rigor of laws of this state.²

The following case is interesting in its details.

In 1855 on the death of Jonathan Carter, a Mississippi planter, a settlement was made of his estate, and all of his slaves were sold for the benefit of his creditors. Among the slaves thus sold were included his two mulatto children. However, prior to his death Carter had attempted to provide for the two children as described in the following document. A certain friend of the deceased Carter, Barksdale, claimed Jane and William, by virtue of the purchase of them made by him from Jonathan Carter in his life time. He relied upon a deed executed by himself and the said Carter, on the ninth of February 1853, by which the said slaves, Jane and William, and some other property were conveyed to the said Barksdale (the said Carter retaining possession and control of them during his life) upon the condition "that the said Barksdale, at the death of the said Carter, to take charge of the yellow girl, nearly white named Harriet, aged twelve years, born of a house woman Fanny, belonging to the said Carter, and to keep the said Harriet in his house as a free white person, and in no way to be treated as a slave, but the said Harriet to be fed from his table; to sleep in his house, and to be

¹ Poole Heirs v. Poole Executors, 33 Alabama Reports, p. 145 (1858); Atwood Heirs v. Beck Adms., 21 Alabama Reports, p. 590 (1852); Ambercrombie's Heirs v. Ambercrombie Exc., 27 Alabama Reports, p. 489 (1855).

² Hinds et al., v. Brazelle et al., Howard, Mississippi Reports, II, 837 (1838).

clothed from his store, both fine and common; and the said Harriet shall have the full benefit of her labor, and also the full right, power, and privilege of making complaint to the guardian Now if the said Harriet shall marry any free white man, at any time during the life of the Barksdale and the said guardian shall consult together, and if they deem it proper and right, they shall give the said Harriet a portion of the said property, or so much as they may deem equitable and just"¹

The children were sold, but Barksdale seems to have done all he could to carry out the wishes of his friend.

In 1858 the white relations of James Brown, a deceased Mississippi planter, attempted to secure the estate left by the deceased to his two mulatto sons. Of these two boys it is reported that

during the time Francis and Jerome were at Brown's house, Brown did not treat them as slaves; they ate at his table, slept in the house, etc. Francis went when and where he pleased, hunted, fished, exercised authority on the place, as any young man would on his father's plantation, ordered the negroes to do what he considered necessary. Francis is reported in Indiana, married and doing well.

In 1849 their father had carried them to Cincinnati, "with intent to evade the laws of this state with respect to emancipation of slaves" and afterwards returned with them to reside in the State of Mississippi. In this instance the courts held that the young men were still slaves and the property of the estate of the deceased father.²

In 1857 Nancy Wells brought suit as a citizen and resident of the State of Ohio against the executor of the will of Edward Wells, deceased. This is the case of a mulatto woman who had been left a small estate by her deceased white father. In 1846 her father had taken her to Ohio, where he emancipated her. She, however, came back to Jackson, Mississippi, where she married Samuel Watts, a free Negro barber of that place. The courts refused to grant her petition.³

In the State of Louisiana, racial relations differed from such relations in the States already studied in proportion as such relations were influenced by the Napoleonic code or by characteristic Spanish and French social attitudes. In the early years of this State's history there are to be found many contrasts, but these contrasts become less evident as more and more Anglo-Saxon

¹Barksdale v. Elam et al., 30 Mississippi Reports, p. 694 (1855).

²Shaw v. Brown, 35 Mississippi Reports, p. 246 (1858).

³Mitchell v. Wells, 37 Mississippi Reports, p. 235 (1859).

settlers migrate into the State; and by 1860 there is much unity, as it concerned racial mixture, in all the slave States, Louisiana included. In colonial Louisiana in contrast to the southern States, the principle of the Roman law, that the son follows the condition of the father, was applied to the mulatto offspring of white fathers. A Louisiana judge informs us,

Such was the law of Louisiana after it came under the dominion of Spain, and as there were at that time but few of the white women in the colony, and hardly any of equal condition with the officers of the government and of the troops stationed here, the inevitable consequence was that these gentlemen formed connections with women of color. This custom coming as it did from the ruling class soon spread through out the colony, and was persevered in long after there ceased to be any excuse for its continuance. It was to remedy this state of affairs, that the framers of the Code of 1808 first created the incapacities of which the plaintiffs claim the benefit.¹

Social conditions as they developed under the above régime will be described at a later point in this study. But it will be found that the fathers of Louisiana mulattoes manifest a very real attachment to their children and in very many cases such children inherited, according to law, large and valuable estates. After 1808 we find laws enacted which placed on the mulattoes restrictions which were to cause many of the problems that we are about to consider. A decision of the Louisiana courts in 1832 declared that the decisions of the courts of France were no longer binding as they affect the mulatto offspring of white men and that it has been found necessary to pass many restrictive acts to protect white "heirs from the too great fondness of the natural parents of such children."² An act of 1857 prohibited the emancipation of mulatto children, and a decision handed down in that year declared, "An acknowledgment by the father of natural children, by his own slave, besides being an offense to morals, is a mere nullity."³

After 1833 in the records of the Louisiana courts are to be found more cases involving the status of the mulatto than in any other State. The explanation of the large number of these cases is to be found in the wide extent of the intermixture of races among the French and Spanish population of the region, and in the conflict of the French and Spanish racial attitudes with English attitudes and institutions. Anglo-American institutions

¹Baldillo v. Tio, 6 King, Louisiana Reports, p. 129 (1848).

²Jung v. Doriscourts et al., 4 Miller, Louisiana Reports, p. 175 (1832).

³Turner v. Smith et al., 12 Ogden, Louisiana Reports, p. 417 (1857).

finally triumphed over Spanish-French resistance, and Anglo-American ideals and prejudices were superimposed on Latin Louisiana; but when the ancient customs and traditions conflicted with the American slave code, there were many in Louisiana who sought to evade and nullify the law. Hence, the records of the courts preserve abundant evidence of the efforts of white fathers, in this State, to protect and provide for their mulatto offspring.

One of the first restrictions placed upon the mulattoes of Louisiana was a requirement that a white father must legally acknowledge his mulattoes to be his natural children in order that they might inherit his property. In 1840 the white relations of one Alexander Verdun attempted to gain possession of his estate on the ground that the children to whom his estate had been left were not legally acknowledged as his natural children.¹ In 1844 the white relations of Eugene Macarty attempted to show that the son to whom his estate had been left had not been acknowledged according to the law.² Another of the restrictions placed on the mulatto was that which limited the donation of more than one-fourth of the value of the deceased man's estate to persons of color. In 1843 when one Maurice Prevost bequeathed to Clarine and her daughter, Florestine Cecile, certain valuable property, his relations attempted to show that his will was void and illegal because "Clarine was his concubine, and could not receive a greater portion than that allowed by law, and because Florestine is the bastard daughter of the deceased, begotten by him from his said concubine."³ Another case of this kind is reported in 1845. In this instance it is recited that,

the deceased was possessed of a very large estate, composed of real and personal property, and of slaves, which were inventoried after his death amounting to a very large sum. That as the sisters of the late Sebastian Ripoll, otherwise known as Francisco Ballista, they are entitled to inherit from him each the undivided half of his entire succession; but that it appears, that the said Sebastian, in 1832, made a will, under the fictitious name of Francisco Ballista, by which he gave the bequeathed to a natural child, named Floresa Horina, the defendant the entire estate.⁴

¹Robinson v. Verdun, 14 Curry, Louisiana Reports, p. 542 (1844).

²Macarty v. Roach, 7 Robinson, Louisiana Reports, p. 357 (1844).

³Prevost v. Martell, 10 Robinson, Louisiana Reports, p. 512 (1845).

⁴Ripoll v. Morina, 12 Robinson, Louisiana Reports, p. 552 (1845).

In this instance it was decided that the mulatto child could inherit but one-fourth of the property, according to the law. In the same year 1845, a certain L. B. Compton died leaving an estate valued at \$184,640.35. He bequeathed to "my two children, Scipio and Loretta, who have been acknowledged by me" one-fourth of his estate. To them he made specific bequests of a plantation, 545 acres in extent, with its improvements, many slaves, etc. The white relations of the deceased attempted to upset the will, but the court supported the claim of the mulatto children to one-fourth of the value of the property.¹ A decision of the courts of Louisiana in 1847 declared that "donations of moveables to a concubine are valied, but they may be reduced to one-tenth of all the property left by the testator."²

The following record of social conditions in Louisiana illustrates the efforts of a white father to secure the right of his colored children to his entire estate. Here, again, the State refused to permit the children to receive the entire estate. The record declares,

Macarty (the deceased) was a nobleman and an officer in the Spanish army. At the age of seventeen he dwelt with one of his uncles, also a Spanish officer, who lived with a woman of color. Augustin soon followed his example, and had in succession several liasons with women of that class, until in 1799, he took Celeste Perrault, with whom he lived nearly fifty years, she lived in his house, and her conduct was such as to enable her to retain his regard and affection to the last. Patrice was the issue of this connection; and the correspondence between him and his father clearly shows, that he and his mother were to Macarty all that a legitimate wife and son could have been. In the later part of his life he had no other society but that of Celeste, and no occupation save that of purchasing and sending goods to Patrice, who kept a shop in Pensacola. His letters to his relations show that he was completely estranged from them, and show a strong desire on his part to convince them that he was poor and that they had nothing to expect from him.

This old gentleman had attempted to give his property to his son prior to his death and thus avoid the laws of inheritance. However, the State denied the wishes of the father.³

In 1855 there appears a similar case. In this instance William Weeks gave to his mulatto son, David, \$16,000 in donations

¹Compton v. Prescott, 12 Robinson, Louisiana Reports, p. 56 (1845); Franchon Morris v. Compton, 12 Robinson, Louisiana Reports, p. 76 (1845).

²Oliver v. Blaneq, 14 Louisiana Reports, p. 517 (1847).

³Badillo et al. v. Tio, 6 King, Louisiana Reports, p. 129 (1851).

of \$4,000 per year. The white relations of William Weeks objected on the ground that the father sought to avoid the act providing that a mulatto heir should not receive more than one-fourth of the estate of a white father and the court sustained the objection of the white litigants.¹

When in 1857 Elisha Crocker died in the State of Louisiana, he left a large estate and "by his will he appointed H. H. Crocker, one of his natural children, his executor, and distributed his property between his housekeeper, who is a colored woman and was once his slave, and his children whom he had by her, and who were legally acknowledged by him previously to his death." This is the case of a native of New York who went to live in Louisiana. He followed the example of many of his predecessors and the relation described above was easily established. This man was much attached to his Negro family; and several years before his death he journeyed to New York and gave one-third of his property to his white relations from whom he secured a release from any claim that they might have to the remainder of his estate. His object was to give the remainder of his wealth to the Negro woman and his children. After his death his New York relations again certified that "in consideration of the promises, and from love and affection for the deceased, and from regard to the children of the said deceased and of their mother Sofa . . . we give up all claim to the estate of Elisha Crocker"; but, in spite of the efforts of the deceased and the liberality of the white relations the court decreed that the Negro heirs could receive but one-fourth of the estate, the remaining part to be distributed among the white relations of the said Elisha Crocker.²

Other examples of the desire of the parents to provide for mulatto children are to be found in the records of the Louisiana courts.³

In this State, also, as in the State of Alabama and Mississippi, it is to be found that many fathers and masters carried their Negro families to the State of Ohio and emancipated them

¹O'Hara v. Conrad, 10 Randolph, Louisiana Reports, p. 638 (1855).

²Reed v. Crocker, 12 Ogden, Louisiana Reports, p. 436 (1857).

³Cecile v. Lacoste, 8 Randolph, Louisiana Reports, p. 142 (1853); Bird v. Vail, 9 Randolph, Louisiana Reports, p. 176 (1854).

there.¹ Problems similar to those already described resulted and might be cited for the State of Louisiana. From 1857 to 1860 other cases appear in which women and children have been promised their freedom and a share of their master's and father's property, and the will of the deceased provided for their care; but by this time emancipation was no longer possible and the condition of these women and children had been declared "offensive to morals." Therefore, in such cases, being valuable property and a part of the master's estate, these mothers and their children were ordered to be sold for the benefit of the legal heirs.²

The evidence used in this chapter leaves no reason to doubt that there were in the slave country men who recognized responsibilities and obligations imposed upon them by the errors and frailties of their humanity. There is reason to believe that in the case of these men the victims of their human passions were placed above the slave law and above slave institutions; they were the masters' children, and the masters were sorely troubled for their children.

The large number of mulattoes found among the free Negroes indicates that many planters freed their mulatto offspring rather than have them remain as slaves or, perhaps, be sold when the master or father died.³ However, it is not to be supposed that all fathers recognized such obligations. Attention must be called to the large number of mulattoes found among the slaves and to

¹ Mary v. Brown, 5 King, Louisiana Reports, p. 269 (1850); Haynes v. Frone, 8 Randolph, Louisiana Reports, p. 25 (1855); Henrietta v. Barnes, 11 Randolph, Louisiana Reports, p. 453 (1856); Virginia and Celestie v. Himel, 10 Randolph, Louisiana Reports, p. 185 (1855); Hardesty v. Wormley, 10 Randolph, Louisiana Reports, p. 239 (1855); Barkley v. Sewell, 12 Ogden, Louisiana Reports, p. 263 (1857).

² Turner v. Smith, 12 Ogden, Louisiana Reports, p. 417 (1857); Collins v. Hallier, 12 Ogden, Louisiana Reports, p. 778 (1857); Delphine v. Guillet, 13 Ogden, Louisiana Reports, p. 13 (1858); Price v. Roy, 14 Ogden, Louisiana Reports, p. 697 (1859); Louisiana v. Baillie, 15 Ogden, Louisiana Reports, p. 555 (1860).

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NEGRO POPULATION*

Slave Population		Free Negro
Black	2,957,657	275,400
Mulatto	246,656	159,095

* Compendium of the Seventh Census, 1850, pp. 82-83.

whom all the statutes of the slave code applied. If certain fathers were kind to their mulatto children other fathers, being human, were not kind or thoughtful. The accidents of life under the system could bring misfortunes and the rigors of slavery did apply often to persons of a larger degree of white than of Negro blood. In certain cases mulatto children knew their fathers and the fathers knew their children but if in other cases fathers can be regarded as irresponsible, in every case, the responsibility for these evils must be placed upon human nature, existing in an unfortunate economic system.

